

No. 13-0490 BN

1. Wooliver was licensed by the Board as an RN on May 17, 1994. Wooliver's license was current and active at all times relevant to this case.

2. On May 24, 2011, Nightingale Nurses, LLC hired Wooliver to be a traveling nurse in the emergency department at St. Bernadine Medical Center in San Bernadino, California.

3. On May 25, 2011, Wooliver submitted a urine sample for a pre-employment drug screen.

4. Wooliver's drug screen was positive for methadone.

5. After Wooliver was made aware of the positive drug screen result, she admitted consuming two methadone tablets she misappropriated from her sister. Wooliver did not have a prescription for methadone.

### **Conclusions of Law**

We have jurisdiction to hear the Board's complaint.<sup>1</sup> The Board has the burden of proving Wooliver committed an act for which the law allows discipline.<sup>2</sup> The Board argues there is cause for discipline under § 335.066.2(1) and (14):

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required by sections 335.011 to 335.096 or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

(1) Use or unlawful possession of any controlled substance, as defined in Chapter 195, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by sections 335.011 to 335.096;

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<sup>1</sup> Section 621.045. Statutory references, unless otherwise noted, are to the 2013 Supplement to the Revised Statutes of Missouri.

<sup>2</sup> *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo.App .E.D. 1989).

(14) Violation of the drug laws or rules and regulations of this state, any other state or the federal government[.]

Wooliver tested positive for methadone. Methadone is a Schedule II controlled substance.<sup>3</sup> Section 195.202 provides:

Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to possess or have under his control a controlled substance.

Section 324.041 provides:

For the purpose of determining whether cause for discipline or denial exists under the statutes of any board, commission, or committee within the division of professional registration, any licensee, registrant, permittee, or applicant that tests\* positive for a controlled substance, as defined in chapter 195, is presumed to have unlawfully possessed the controlled substance in violation of the drug laws or rules and regulations of this state, any other state, or the federal government unless he or she has a valid prescription for the controlled substance. The burden of proof that the controlled substance was not unlawfully possessed in violation of the drug laws or rules and regulations of this state, any other state, or the federal government is upon the licensee, registrant, permittee, or applicant.

Wooliver tested positive for the controlled substance without a prescription that authorizes legal possession. Therefore, Wooliver unlawfully possessed methadone in violation of § 195.202.

Such unlawful possession is cause to discipline her license under § 335.066.2(1) and (14).

Although Wooliver raised the issue of the validity of the test result, she did not present any credible evidence to support her argument that the test result constituted a false positive. Moreover, after testing positive for methadone, she admitted misappropriating two tablets of the drug from her sister.

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<sup>3</sup> Section 195.017.4(2)(o).

### **Summary**

Wooliver is subject to discipline under § 335.066.2(1) and (14).

SO ORDERED on April 8, 2014.

\s\ *Sreenivasa Rao Dandamudi*  
SREENIVASA RAO DANDAMUDI  
Commissioner